IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17056 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIRENDRASINH @ DADHI S/O.SHIVSINH RAJPUT - Petitioner(s)
Versus
STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 16/09/2005

ORAL JUDGMENT

1. The challenge to the order of detention dated 28.06.2005 passed by the Police Commissioner, Surat City in exercise of powers under Subsection 1 of Section 3 of the Gujarat Prevention of Antisocial Activities Act, (for short, 'the PASA Act'), 1985 detaining the detenue as a “Bootlegger” on the ground that the order of detention is illegal and unconstitutional.

2. Alongwith the order of detention dated 28.06.2005 grounds of detention were also served upon the detenue.

3. The Detaining authority has stated the activities carried out by the detenue indulging into offence punishable under various sections of Bombay Prohibition Act and solitary crime, came to be registered at Amraiwadi Police Station being

C.R.No.5252 of 2005. The order of detention also mentions about inaffectiveness of other remedies under the Bombay Police Act including the provisions of Section 57(c) of the said Act and Section 93 of the Prohibition Act. The detaining authority has also considered that on completion of remand period, the detenue is likely to be enlarged on bail and continue in future into the similar illegal activities. The detaining authority has further considered that aforesaid registration of crime is prejudicial to the maintenance of the public order and therefore power is exercised in consonance with the provisions of the Act.

4. The learned advocate for the detenue Mrs. Banna Dutta, at the outset has relied upon the order dated 18.08.2005 passed in Special Civil Application No.11733 of 2005 in the case of Balkarsing @ Shamshersing S/o. Bhalsing Jat (Chaudhry) Vs State of Gujarat and others. Relying upon the aforesaid order, Smt Banna Dutta, learned advocate for the detenue has submitted that alleged antisocial activities cannot be said to have

bearing on the maintenance of the public order or the general health of the public and simply a crime is registered, it cannot form a relevant material for arriving at the subjective satisfaction by the Detaining Authority that though the petitioner is a bootlegger, required to be detained under the provisions of the Act.

5. Mrs. Hansha B. Punani, learned Assistant Government Pleader has tried to support the order of detention but could not dispute the release of co detenue by this court vide order dated 18.08.2005 as stated in the earlier para.

6. Considering the facts and rival submissions and on perusal of the records of the case and the order dated 18.08.2005 passed in Special Civil Application No.11733 of 2005, I am inclined to accept the submissions of learned advocate for the detenue that registration of solitary crime for the offences punishable under the Bombay Prohibition Act by itself cannot said to have bearing or nexus on the disturbance of the public order or the

general health of the public and, therefore, the decision reported in 2004 (1) GLR 864 and the ratio laid down therein can be reasonably applied in the facts of the present case also.

7. As laid down by several decisions of this Court it is required to be noted that only in such case where activities of the detenue cannot be curbed by invoking remedies under ordinary potential laws and such antisocial or criminal activities are disturbing the public order, in such cases only the concerned authority can take recourse to the statute framed for preventive detention of the person and not otherwise.

8. In the present case, considering all the facts, it is evident that the solitary incident of crime under the provisions of Bombay Prohibition Act do not constitute sufficient ground for arriving at subjective satisfaction by the detaining authority in absence of any other material, and, therefore, the order of detention dated 28.06.2005 is hereby ordered to be quashed and set aside and the detenue

Virendrasinh @ Dadhi S/o. Shivsinh Rajput is ordered to be set at liberty if not required in any other offence by any other authority.

9. Rule is made absolute. Direct service is permitted.

(ANANT S. DAVE, J.)amit